IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 65 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

UNITED INDIA INSURANCE CO. LTD

Versus

GHANSHYAMBHAI LILADHARBHAI SONI DECD. THRO' HEIRS LALITA

Appearance:

1. First Appeal No. 65 of 2002

MS SONAL D VYAS for Appellant

..... for Respondents No. 1,2-3

MR HM PRACHCHHAK for Respondents No. 1/1-1/2

MR AM PAREKH for Respondents No. 4-5

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 18/01/2002

ORAL JUDGEMENT

By filing this Appeal under Section 173 of the

Motor Vehicles Act, 1988, appellant-United India Insurance Co. Ltd. has brought under challenge the order dated March 24, 2000 recorded below exhibit-6 in MACP No. 25 of 1999 by the Motor Accident Claims Tribunal (Special), Porbandar by which appellant is directed to pay Rs.50,000/- jointly and severally with running interest @ 12% per annum from the date of the application till realisation within one month from the date of the order by way of compensation under 'No Fault Liability' principle envisaged under Section 140 of the Motor Vehicles Act.

2. Ms. Sonal Vyas, learned advocate for the appellant contended that the claimant has not joined other tort-feasors involved in the accident and therefore without joining them, impugned order passed under 'No Fault Liability' principle envisaged under Section 140 requires interference at the hands of this Court. She, therefore, contended that many a times claimants are withdrawing the main petition after getting compensation under 'No Fault Liability' principle. Therefore, order with respect to safeguarding the interest of the Insurance Company is required to be passed.

3. I have heard Ms. Sonal Vyas, learned advocate for the appellant and Mr. HM Prachchhak, learned advocate for respondent No.1/1 - original claimant. I have perused the averments made in the memo of appeal, grounds set out therein and also the impugned order. Obviously this order is in the nature of an interim order, which is subject to adjustment against the final award which may be passed in the main MACP No. 25 of 1999 which is still pending before the MACT (Aux.) Porbandar. This principle is established by the Supreme Court in the case of THE ORIENTAL INSURANCE CO. LTD. V. HANSRAJBHAI V KOTADIA, 2001(4)JT 477.

4. In view of the aforesaid state of affairs, I see no reason to interfere with the impugned order at this stage by admitting the appeal. However, with a view to safeguard the interest of the appellant-Insurance Company, an undertaking of the original claimant is required to be obtained so that the original claimant shall not abandon the main claim petition with a view to fritter away the amount of compensation of Rs.50,000/and interest thereon which is awarded in favour of the claimant and which is obviously required to be disbursed in his favour.

5. In this view of the matter, it is directed that the original claimant shall file a solemn undertaking

before the Tribunal within a period of four weeks of the service of this order to the effect that the main claim petition shall not be abandoned, shall not be withdrawn and shall not be permitted to be dismissed for default or for any other cause and that the claimant shall obtain a decision on merit in the said claim petition. The amount awarded under the impugned order shall be adjusted against the final award in the main claim petition. On the aforesaid undertaking being filed by the claimant, the amount under the impugned order may be withdrawn by the original claimant on furnishing security to the satisfaction of the Tribunal.

6. Subject to the aforesaid observations and directions, the appeal is dismissed at the inception with no order as to costs.

7. The amount deposited in the appeal, if any, with the registry is directed to be transmitted to the Tribunal forthwith. Direct service is permitted.

(A.M.Kapadia, J)

Jayanti*